

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: John Butler	Team: Squad #5	CCRB Case #: 201607263	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Tuesday, 08/16/2016 6:45 PM	Location of Incident: In front of 419 West 17th Street	Precinct: 10	18 Mo. SOL 2/16/2018	EO SOL 2/16/2018	
Date/Time CV Reported Tue, 08/16/2016 8:18 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 08/24/2016 10:52 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. DT3 Paul Rivera	01283	940050	NARCBMS

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Jose Taveras	04870	948143	NARCBMS

Officer(s)	Allegation	Investigator Recommendation
A.DT3 Paul Rivera	Force: Detective Paul Rivera used physical force against § 87(2)(b) [REDACTED]	

Case Summary

This case is over 90 days old because § 87(2)(b)'s attorney, § 87(2)(b), declined to allow § 87(2)(b) to provide a verified statement about the incident due to his pending criminal charges. The case was reopened on January 19, 2017, upon § 87(2)(b) request, and § 87(2)(b) was interviewed on February 3, 2017. The case was closed 32 days after § 87(2)(b)'s interview.

On August 16, 2016, Cpt. Peter Cassiere of Narcotics Borough Manhattan South filed this complaint with IAB via phone on behalf of § 87(2)(b) generating log number 16-29187. The complaint was received at the CCRB on August 24, 2016, via log number 2016-29660. This case was placed on the agency's sensitive case list § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

An attorney was consulted in regards to this case.

On August 16, 2016, at approximately 6:45 p.m., § 87(2)(b) stood in front of a NYCHA apartment complex at 419 West 17th Street in Manhattan. § 87(2)(b) was allegedly involved in a marijuana sale at that location, but § 87(2)(b) denied participating in any such transaction. While standing in front of the building, Det. Paul Rivera and PO Jose Taveras of Narcotics Borough Manhattan South approached § 87(2)(b) to place him under arrest for selling marijuana. During the arrest, § 87(2)(b) was knocked unconscious and sustained a fractured skull and a collapsed lung as a result of falling down a flight of steps while being physically restrained by Det. Rivera (**Allegation A**). § 87(2)(b) was treated at § 87(2)(b) for his injuries. § 87(2)(b) did not recall how he sustained his injuries due to memory loss he sustained as a result of his injuries (BR 01).

Video footage showed that § 87(2)(b) attempted to flee from Det. Rivera and PO Taveras and that Det. Rivera physically restrained § 87(2)(b) (BR 04-05). The video also showed that § 87(2)(b) fell from the top of a four-step staircase during the struggle, striking the back of his head on the ground. § 87(2)(b) was arrested for § 87(2)(b), § 87(2)(a) 160.50

§ 87(2)(b)'s charges were dismissed.

Video footage of the incident was obtained from NYCHA surveillance cameras that showed the entire incident. The raw video files cannot be played in CTS. The relevant portions of the video are located in IA 16 and 31 and are also embedded below. The first camera angle (Camera 1) shows the front of 419 West 17th Street directly outside of the building (BR 04). The second camera angle (Camera 2) shows the inside lobby of the building (BR 05).



201607263_20170201_1236_DM.mp4



201607263_20170214_1516_DM.mp4

Mediation, Civil, and Criminal Histories

This case was unsuitable for mediation due to § 87(2)(b)'s injuries and his intention to file a notice of claim in regards to this incident. On February 15, 2017, § 87(2)(b) filed a lawsuit against the City of New York in Manhattan Supreme Court (BR 06). The notice of claim was requested from the Comptroller's Office, and the result of that request is pending. § 87(2)(b) has no prior criminal convictions, and his charges from this incident were dismissed (BR 07).

Civilian and Officer CCRB Histories

This is § 87(2)(b)'s first CCRB complaint (BR 08).

Det. Rivera has been a member of the NYPD for 11 years and has been the subject of four prior CCRB complaints involving eight allegations. In case 201001407, allegations were substantiated against Det. Rivera for a refusal to provide name and shield and for a stop, frisk, and search of a person. Det. Rivera received instructions for those substantiated allegations. Det. Rivera does not have any other substantiated allegations in his CCRB history. § 87(2)(g) (See officer history).

Potential Issues

§ 87(2)(b) alleged that he suffered memory loss as a result of the injuries that he sustained during the incident. As a result, § 87(2)(b) stated that he only recalled specific parts of the incident, and he did not recall any of the actions that he or the officers took during his arrest.

Findings and Recommendations

Allegation A – Force: Detective Paul Rivera used physical force against § 87(2)(b)

An attorney was consulted regarding this allegation.

According to all parties, the incident occurred directly outside the front doors of the NYCHA complex at 419 West 17th Street in Manhattan (BR 01-03). All parties acknowledged that the area in front of the doors consisted of a concrete landing leading to a set of four steps. A photograph of the location taken by IAB investigators confirmed that description of the incident location. § 87(2)(b) stood between the steps and the front door at the time of the incident (BR 11).

Prior to the incident, § 87(2)(b) stated that he exited his apartment at 419 West 17th Street, Apt. 9C, and walked his dog around the outside of the apartment building. § 87(2)(b) returned to the front of the building where he encountered his brother, § 87(2)(b). § 87(2)(b) stated that he shook hands with § 87(2)(b) and then walked inside the building with § 87(2)(b). § 87(2)(b) took § 87(2)(b)'s dog and entered the elevator while § 87(2)(b) walked back outside the building. § 87(2)(b) was alone during his walk, and he did not recall for how long he walked before encountering § 87(2)(b). § 87(2)(b) denied being involved in any way with a marijuana sale, and he denied offering any resistance to police officers during the incident.

According to § 87(2)(b), several males approached him while he stood in front of the building. § 87(2)(b) stated that his next memory was waking up in police custody in § 87(2)(b) where he felt pain to his head. § 87(2)(b) was discharged from the hospital, went to Central Booking and court, and then returned to his apartment. § 87(2)(b) never discovered what happened during the incident. § 87(2)(b) returned to § 87(2)(b) on an unknown date following the incident because he vomited blood and had lingering headaches. At § 87(2)(b), doctors removed part of his skull and administered approximately 60 staples to complete the surgery.

According to Det. Rivera and PO Taveras, they were assigned to the apprehension group of their narcotics team. Their assignment was to follow undercover officers and apprehend individuals identified by undercover officers as having engaged in narcotics transactions.

According to Det. Rivera, he received a radio call from an undercover officer reporting that two Hispanic males were engaged in a drug transaction at the incident location. Det. Rivera immediately responded to the scene with PO Taveras, and Det. Rivera observed § 87(2)(b) standing alone in front of the building. Det. Rivera entered the threshold of the front door while

PO Taveras stood behind him. At that time, Det. Rivera saw the undercover officer standing in the lobby of the building, and the undercover officer pointed directly outside the door behind Det. Rivera. Det. Rivera took that signal to indicate that § 87(2)(b) was one of the civilians associated with the prior radio call. Det. Rivera pointed outside toward § 87(2)(b) to confirm the undercover officer's signal, and the undercover pointed outside to confirm his signal.

According to Det. Rivera, he turned toward § 87(2)(b) said, "Police," and approached § 87(2)(b) who stood approximately five feet away from the officers. § 87(2)(b) immediately moved away from the officers. Det. Rivera moved toward § 87(2)(b) and grabbed § 87(2)(b)'s upper body with the intention to restrain him to place him under arrest. § 87(2)(b) grabbed Det. Rivera's right arm and moved away from him while Det. Rivera also held § 87(2)(b)'s body and moved toward § 87(2)(b). According to Det. Rivera, the momentum of the struggle brought § 87(2)(b) and Det. Rivera to the top of the nearby stairs, and their momentum caused them to fall down the stairs. The fall caused § 87(2)(b) to strike the back of his head on the ground, which caused the aforementioned injuries. § 87(2)(g)

PO Taveras and Det. Rivera denied that Det. Rivera used any other physical force against § 87(2)(b) besides grabbing his body while moving toward him. Det. Rivera stated that he did not intentionally tackle or throw § 87(2)(b) down the steps, and Det. Rivera stated that he was not conscious of the steps while apprehending § 87(2)(b).

The Threat, Resistance, or Injury Incident Worksheet prepared for this incident noted the only force used by Det. Rivera was to grab § 87(2)(b)'s arms (BR 09). The worksheet noted that Det. Rivera used force to restrain a fleeing suspect and to overcome resistance.

The video footage of the incident shows § 87(2)(b) exchange an object with § 87(2)(b) in front of the building <Camera 1, 00:00-00:35>. § 87(2)(b) reviewed that section of the video during his interview, but § 87(2)(b) did not recall what he was doing at that time. The video footage shows § 87(2)(b) and § 87(2)(b) enter the apartment building <Camera 1, 00:22-00:33> and also shows § 87(2)(b) remove a paper object from his wallet and hand it to § 87(2)(b) inside of the building <Camera 2, 00:00-00:18>. The video then shows § 87(2)(b) exit the building and stand directly outside of the front door <Camera 1, 01:11-01:17>.

The video shows Det. Rivera and PO Taveras approach the front of the building after § 87(2)(b)'s interaction with § 87(2)(b) <Camera 2, 00:40>. Det. Rivera enters the building and appears to point outside toward § 87(2)(b). Det. Rivera identified that section of the video as the moment in which the undercover officer, who cannot be seen on camera, pointed at § 87(2)(b) to identify him as the suspect in the observed drug transaction.

The video shows that § 87(2)(b)'s apprehension occurred over a time period of three seconds <Camera 1, 01:17-01:20>. Det. Rivera turns around in the doorway toward § 87(2)(b) <Camera 2, 00:41-00:43>, and § 87(2)(b) turns to face Det. Rivera as though alerted to Det. Rivera's presence <Camera 1, 00:17>. Det. Rivera and PO Taveras move toward § 87(2)(b) and § 87(2)(b) pulls his arms away as the officers extend their arms outward toward him <Camera 1, 01:18>. § 87(2)(b) moves away from the officers toward the stairs <Camera 1, 01:18>, and Det. Rivera extends his body forward to grab § 87(2)(b) <01:19>. Det. Rivera pursues § 87(2)(b) while grabbing his shoulders <Camera 1, 01:19>, and § 87(2)(b) and Det. Rivera fall down the stairs in the course of the struggle upon reaching the top step <01:20>.

Force may be used when it is reasonable to place a person in custody or to prevent escape from custody (BR 10). The reasonableness of the use of force is based upon the totality of the circumstances known by the member of service at the time of the use of force. The Department

examines the reasonableness of force viewed from the perspective of a member with similar training and experience placed into the same circumstances as the incident under investigation. Patrol Guide Procedure 221-01.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Squad:

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date